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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/879,794	06/11/2001	John M. Krochta	023070-114410US	3739
20350	7590	04/06/2006	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			PADEN, CAROLYN A	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 04/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/879,794	KROCHTA ET AL.	
	Examiner	Art Unit	
	Carolyn A. Paden	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The rejection of the claims over Tressler and Fennema and Matz taken together has been withdrawn in view of the newly applied reference to Bear.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bear.

Bear discloses treating soggy cold cereal at 350F for 2-3 minutes to re-crisp the cereal at page 37. The claims appear to differ from Bear in the recitation "bowl life". It would have been obvious to one of ordinary skill in the art to expect the crisp cereal of Bear to have an enhanced bowl life because of its crispness. It is appreciated that "substantially pure water" is not mentioned but one of ordinary skill in the art would not expect the moisture absorbed on a muggy day to be impure. It is also appreciated that the extent of hydration is not mentioned but an ordinary muggy day would not be expected to fully hydrate the interior of the cereal product. It is appreciated that the mode of addition of the water or the heat treatment

conditions and cereal type are not identical to the reference but one of ordinary skill in the art would be able to modify the time and temperature of treatment when given the broad teachings of the reference.

Claims 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bear in view of Matz.

Bear discloses re-crisping soggy potato chips, at page 85, by treatment in a broiler for a short time or by microwaving them on high for 30-60 seconds and then allowing them to stand for 3 minutes. The claims appear to differ from Bear in the preamble limitation. Matz teaches at page 215, that "when moisture content of a substance is reduced to a level insufficient to allow a monomolecular layer, special properties result...The texture is altered, resulting in a friable condition..." Thus one of ordinary skill in the art would expect that a rehydrated potato chip would be dried to a point that is less friable, according to the individual taste of the consumer.

Claims 21 –31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bear in view of Fennema.

Bear discloses, at page 75, treating nuts in boiling water for 3 minutes to remove the skin. Then the nuts are dried with a towel. The claims appear to differ from Bear in the recitation of the shelf life. Fennema

teaches at page 58, that very low water activity promotes lipid oxidation.

Thus at a specific level of bound water in foods, one of ordinary skill in the art would expect the shelf life of a shelled nut to be extended because of the protection that water provides to the dried product. No unobvious or unexpected result is seen from the recitation of any particular nut.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

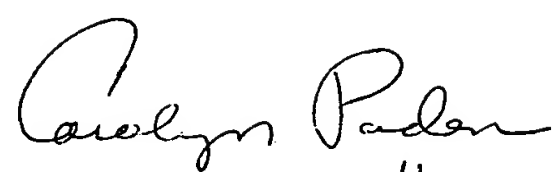
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on

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access to the Private PAIR system, contact the Electronic Business Center
(EBC) at 866-217-9197 (toll-free).


CAROLYN PADEN 4-4-06
PRIMARY EXAMINER 1761